

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARMEN MELENDEZ,

Plaintiff,

Docket No.:

-against-

Petition for Removal

MARCOS O. LOPEZ and NAVARRO TRUCKING LLC,

Defendants.
-----X

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK**

The Petitioners, MARCOS O. LOPEZ and NAVARRO TRUCKING LLC, by their attorneys Carman, Callahan & Ingham, LLP, respectfully shows:

1. The Petitioners are all of the named Defendants in the above-entitled action.
2. On or about December 7, 2021, a Summons and Complaint was filed in the Supreme Court of the State of New York, County of Bronx as against MARCOS O. LOPEZ and NAVARRO TRUCKING LLC. A copy of the Summons and Complaint and Affidavits of Service are annexed hereto as Exhibit "A." On February 25, 2021, an Answer was served on behalf of MARCOS O. LOPEZ and NAVARRO TRUCKING LLC; a copy of which is annexed hereto as Exhibit "B."
3. The above-described action is a civil action for which the Court has jurisdiction under 28 U.S.C. §1332(a)(1) and is one which may be removed to this Court by the Petitioner/Defendant herein pursuant to the provision of 28 U.S.C. §1441.
4. Plaintiff alleged in the Summons that she resides in the County of Bronx, State of New York. See, Exhibit "A." The Court's jurisdiction is based upon diversity of citizenship, 28 U.S.C. Section 1332 in that the Plaintiffs and Defendants are citizens of different states.

Defendant Navarro Trucking, LLC is incorporated in the State of Connecticut and maintains a principal place of business in the State of Connecticut at 780 James P. Casey Road, Bristol, Connecticut 06010. See, Exhibit “C.” Defendant MARCOS O. LOPEZ resides in New Britain, Connecticut. See, Exhibit “A.”

5. On February 28, 2022, Defendants served upon the Plaintiff a Demand for Ad Damnum. A copy of the Demand is annexed hereto as Exhibit “D.” Plaintiff responded to Defendants’ Demand for Ad Damnum, on March 22, 2022 and asserted that the Plaintiff is alleging total damages in the amount of \$1,000,000. A copy of the Plaintiff’s response is annexed hereto as Exhibit “E,” and was received by Defendants MARCOS O. LOPEZ and NAVARRO TRUCKING LLC on March 22, 2022. This was the first time that the Defendants were apprised of the dollar amount being sought by Plaintiff. Based on Plaintiff’s response, the amount in controversy exceeds Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

6. Further, the attached documents are significant as they relate to the Court’s question concerning jurisdiction as they verify that the parties are diverse and that the amount of this controversy exceeds \$75,000.00. For example, the sworn Complaint alleges not only economic damages, but also “serious, severe and permanent injuries” allegedly sustained by the Plaintiff. See, Exhibit “A.”

7. This Petition for Removal is filed within thirty (30) days of receipt by Defendants MARCOS O. LOPEZ and NAVARRO TRUCKING, LLC of Plaintiff’s Response to Demand for Ad Damnum. Accordingly, the Petition is timely. See, 28 U.S.C. §1446(b)(2)(B); Moltner v. Starbucks Coffee Co., 624 F.3d 34 (2d Cir., 2010); Baran v. Home Depot USA, Inc., 2016 WL 8711362 (E.D.N.Y. 2016)(time to remove does not begin until plaintiff serves defendant “with

any court papers that specify the amount of damages sought”, and a removal before then is premature); Hill v. Ascent Assur., Inc., 205 F.Supp.2d 606 (USND Mississippi 2002)(one year measured from time of filing of amended complaint).

8. Petitioners/Defendants will pay all costs and disbursements incurred by reason of the removal proceedings hereby brought should it be determined that this action is not removable or is improperly removed.

9. Venue in the Southern District of New York is proper pursuant to 28 U.S.C. Section 112 and 28 U.S.C. Section 1391(a).

WHEREFORE, Petitioners pray that the above action now pending against them in the Supreme Court of the State of New York, County of Bronx, be removed therefrom to the United States District Court for the Southern District of New York in accordance with 28 U.S.C. Sections 1441 and 1446.

Dated: Farmingdale, New York
April 14, 2022

Yours, etc.

CARMAN, CALLAHAN & INGHAM, LLP



By: _____

HOWARD J. KAPLAN
Attorneys for Defendants
266 Main Street
Farmingdale, New York 11735
(516) 249-3450
Our File No. 1229-3041

TO: Daniel J. Watts, Esq.
Morgan & Morgan NY, PLLC
Attorneys for Plaintiff
195 Montague Street, 14th Fl.
Brooklyn, NY 11217

(917) 344-7041